

Dear Senators PATRICK, Souza, Ward-Engelking, and
Representatives HOLTZCLAW, Syme, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Commerce:

IDAPA 28.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 28-0000-2100).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/15/2021. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/13/2021.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondoff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee
FROM: Principal Legislative Drafting Attorney - Ryan Bush
DATE: October 27, 2021
SUBJECT: Department of Commerce

IDAPA 28.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 28-0000-2100)

Summary and Stated Reasons for the Rule

The Department of Commerce submits Notice of Omnibus Rulemaking via Docket No. 28-0000-2100. The Department states that it is republishing previously existing rules that were submitted to and reviewed by the Legislature.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted by the Department. There is no anticipated fiscal impact with this rulemaking.

Statutory Authority

This rulemaking appears to be within the statutory authority granted to the Department in Section 67-4702, Idaho Code.

cc: Department of Commerce
Ewa Szewczyk

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 28 – DEPARTMENT OF COMMERCE

DOCKET NO. 28-0000-2100

NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4702(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 28, rules of the Idaho Department of Commerce.

IDAPA 28

- 28.02.03, *Department of Commerce Grant Program Rules*; and
- 28.04.01, *Rules Governing the Idaho Reimbursement Incentive Act*.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rule(s) being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact rule, contact Ewa Szewczyk, (208) 334-2470.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

Ewa Szewczyk
Grants & Contracts Manager
Idaho Commerce
700 W. State Street
Boise, Idaho 83702
Phone: (208) 334-2470
Fax: (208) 334-2631

IDAPA 28 – DEPARTMENT OF COMMERCE

28.02.03 – DEPARTMENT OF COMMERCE GRANT PROGRAM RULES

000. LEGAL AUTHORITY.

These rules have been adopted pursuant to Sections 67-4702, 67-4703, 67-4715, 67-4717, 67-4718, 67-4729, and 67-4733, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 28.02.03, “Department of Commerce Grant Program Rules.” ()

02. **Scope.** These rules implement the following Department of Commerce grant programs: 1) Idaho Regional Travel and Convention Grant Program; 2) Idaho Gem Grant Program; 3) Rural Community Investment Fund; 4) IGEM Grant Program; 5) Idaho Opportunity Fund; and 6) Idaho Community Development Block Grant Program. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Department.** The Idaho Department of Commerce as set forth in Section 67-4701, Idaho Code. ()

02. **Program Guidelines.** Department of Commerce grant programs are administered in accordance with applicable federal and state statutes, these rules, grant resources available on the Department's website, and written grant agreements entered into between the successful applicant and the Department. Collectively these laws, rules, handbooks, grant resources, and grant agreements are referred to as “program guidelines” throughout these rules and each may be enforced by the Department. ()

011. -- 049. (RESERVED)

SUBCHAPTER A – GENERAL GRANT PROGRAM REQUIREMENTS

050. GENERAL GRANT PROGRAM REQUIREMENTS.

01. **Application Procedure.** All applicants must meet eligibility requirements specified in program guidelines. Eligible applicants must submit a completed application to the Department and meet the requirements specified in program guidelines prior to the application deadline specified therein. ()

02. **Review of Applications.** Unless otherwise specified, all grants will be reviewed, ranked, and selected by the Department and relevant council members if applicable, in accordance with selection criteria specified in program guidelines. All applicants will be notified of their application status in a reasonable timeframe after the application deadline. ()

03. **Grant Agreement.** All applicants selected for funding must enter into a written grant agreement with the Department. The grant will take effect upon the date of award specified in the grant agreement and grant monies cannot be expended until that date. ()

04. **Amendments to Grant Agreements.** Extensions and amendments to grant agreements are only permitted if agreed to in writing and approved by the Department or applicable council members. ()

05. **Grant Acknowledgment.** If required, projects funded by the Department must acknowledge said program as outlined in the program guidelines. ()

06. **Reporting Requirements.** As specified in program guidelines, the grantee must provide regular progress reports to the Department to demonstrate progress toward planned outcomes, as well as a final report demonstrating the outcomes achieved. ()

07. **Termination of Funding.** The grantee may only use the grant funds in accordance with program guidelines. If at any time the Department becomes aware of a grantee's noncompliance with program guidelines, or

inappropriate or illegal use of grant funds, the Department may terminate the agreement. The Department may require an audit of grant funds. The Department may further terminate a grant if the project loses viability or is unlikely to meet the intent of the original application. ()

08. Limitation on Use of Funds. Program guidelines detail ineligible uses of funds. In addition, funds cannot be used as follows: ()

a. Political activities. For political purposes or to engage in lobbying or other partisan political activities. ()

b. Religious activities. For the construction, rehabilitation or operation of active churches or religious structures used for religious purposes. ()

c. Conflict of interest. If at any time the Department and/or any council member(s) becomes aware of an apparent or potential conflict of interest between a grantee and a private entity which may influence grant funds, the Department may request a meeting with the grantee's representatives. The Department may, at that meeting, terminate the grant if an inappropriate conflict of interest is found. ()

09. Rural Community. Communities that are generally less than twenty-five thousand (25,000) in population. ()

10. Cost Reimbursable. Department grants are cost reimbursable. Grant payment procedures will be established in the program guidelines. The Department will reimburse allowable costs up to the maximum grant amount for which both receipts and matching funds documentation have been provided. The grantee is responsible for any discrepancies in documentation. ()

051. -- 099. (RESERVED)

100. IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM.

01. Program Intent. The intent of this program is to provide grant funds to non-profit, incorporated organizations which have in place a viable travel or convention promotion program, or both, in their area of operation. Preference is given to programs with a primary focus of promoting overnight visitation in Idaho. Funds may be used for tourism marketing which has a positive economic impact to the state of Idaho including, but not limited to, the promotion of accommodations, recreational areas, events, conferences, food and beverage, tourism services, culture, attractions, and transportation. ()

02. Eligible Applicants. Non-profit entities with a focus on tourism. Entities must provide proof of non-profit status including: State of Idaho Certificate of Incorporation, Articles of Incorporation from the Secretary of State, or a letter of determination from the Internal Revenue Service, and Notice of Employer Identification Number assigned by the Internal Revenue Service. ()

03. Review of Applications. The Idaho Travel Council will review applications in accordance with selection criteria specified in program guidelines. ()

04. Matching Funds. This grant requires a cash match of twelve and one-half percent (12.5%) of the amount awarded, with further requirements specified in program guidelines. ()

05. Distribution of Funds. The Department will reimburse funds to the grantee upon submission and review of complete documentation of funds expended. ()

06. Eligible Expenses. ()

a. Program intent. Eligible projects under the Regional Travel and Convention Grant Program must be consistent with the legislative declaration of policy in Title 67, Chapter 47, Idaho Code, and the program intent. Programs that are eligible for consideration must fall under the basic definition of travel or convention promotion. ()

- b. Administrative expense. The following administrative and overhead costs are allowable: ()
 - i. Wages and benefits. Wages and benefits of one (1) designated grant administrator for time directly related to the task of grant administration. Other employee wages and benefits incurred in the execution of the grant program may be used as cash match with documentation. ()
 - ii. Overhead. Reasonable, apportioned overhead costs of the grantee organization required to execute the grant program must be approved by the Idaho Travel Council. The Department will recommend preferred apportionment methods. ()

07. Ineligible Expenses. Unless specified otherwise in the program guidelines, this grant program will not fund: ()

- a. The day-to-day, administrative expenses of organizations that have a travel or convention promotion element; ()
- b. Projects that have alternative funding sources (for example, regular Chamber of Commerce budgets) or that have been funded previously with the agency's own funds; or ()
- c. The promotion of local events; or ()
- d. No expenses related to grant writing, or grant application are eligible. ()

08. Audit Requirement. Grantees who receive one hundred thousand dollars (\$100,000) or more in grant funds will have an audit performed by a Certified Public Accountant and submitted to the Department within sixty (60) days following the close of the grant cycle. ()

101. -- 149. (RESERVED)

150. IDAHO GEM GRANT (IGG) PROGRAM.

01. Program Intent. The intent of this program is to fund community development projects of rural communities for the purpose of improving the local economy, retaining or creating jobs, promoting the community for economic development and tourism, and assisting business expansion and diversification. ()

02. Eligible Applicants. Idaho rural communities under ten thousand (10,000) persons and other Idaho rural communities at the discretion of the Director of the Department of Commerce are eligible to apply for IGGs up to a maximum of fifty thousand dollars (\$50,000). IGGs to city and county governments may be administered by their designees as established by formally adopted resolutions. ()

03. Review of Applications. The Department's Director, in his sole discretion, makes all IGG awards. The Director may make grant awards at any time the Director determines it necessary to take advantage of special opportunities that further the primary objectives of the IGG Program. ()

04. Matching Funds. This grant requires a minimum of twenty percent (20%) matching funds of either cash or in-kind donations for the total amount of IGG funds received. Matching funds can be comprised of any combination of cash and in-kind donations and must meet conditions specified in the program guidelines. ()

05. Distribution of Funds. Grantees receive payment of IGG funds on a cost reimbursement basis. Grant payment procedures will be established in the program guidelines. The Department will reimburse allowable costs up to the maximum grant amount for which both receipts and matching funds documentation have been provided. The grantee is responsible for any discrepancies in documentation. ()

06. Eligible Expenses. Eligible expenses are specified in program guidelines. ()

07. Ineligible Expenses. Funds may not be used for: ()

- a. Payroll costs for city, county, development corporation or other community agencies. ()
- b. Real property acquisition. Construction, rehabilitation, or operation of schools, general government facilities, jails or state facilities. ()
- c. Administrative costs. Expenses related to administering the grant will not be reimbursable to the grantee from grant funds. ()

08. Bid Process. Grantees must contact a minimum of three (3) vendors for quotes or bids for the purchase of goods or services over twenty-five thousand dollars (\$25,000). Prior to reimbursement for such costs, the following information must be submitted to the Department: ()

- a. Item or service purchased. A detailed description of the item or service purchased or to be purchased. ()
- b. Bid verification. Written documentation of three (3) or more businesses or vendors contacted by IGG grantees for bids or quotes listing the businesses or vendors contacted and indicating their response, and a list of all businesses or vendors contacted whether or not a response was received. ()
- c. Reasons for selection. Grantees justification for the business or vendor selected. ()

151. -- 199. (RESERVED)

200. RURAL COMMUNITY INVESTMENT FUND (RCIF).

01. Program Intent. This grant provides funds to rural areas in support of economic expansion and job creation, as defined per the program guideline which includes the RCIF Grant Application and Manual. ()

02. Eligible Applicants. Applicants for the Idaho Rural Community Block Grants are as follows: ()

- a. City applicants. Rural cities are those generally less than twenty-five thousand (25,000) in population. Cities contiguous to large cities are not eligible to apply. ()
- b. County applicants. Counties with less than twenty-five thousand (25,000) population. However, any county may apply for unincorporated communities. ()
- c. Indian tribes located in Idaho may apply if the project site is located on reservation land and within a community of less than twenty-five thousand (25,000) population. ()

03. Review of Applications. Presentations must be made by key elected officials of the applicant to the Department's Economic Advisory Committee (EAC) on the need for the project, the local commitment to the project, the economic impact of the project on the community, and any additional information that should be given special consideration. Applications will be reviewed and ranked on criteria specified in the RCIF Grant Application and Manual. The EAC may recommend standby projects to be funded if enough funds become available at a later time. ()

04. Eligible Expenses. Eligible expenses are specified in the RCIF Grant Application and Manual. ()

05. Ineligible Expenses. Any activity not authorized in the RCIF Grant Application and manual is ineligible to receive RCBG funds, including: ()

- a. General conduct of government. Assistance to buildings, or portions thereof, used predominantly for the general conduct of government. Such buildings include, but are not limited to, city halls, courthouses, jails, police stations, state or local government office buildings, and other building used for general government

administration affairs. Also ineligible are school buildings, school administration offices, and university and college vocational-technology facilities. ()

b. Local government expenses. Expenses to carry out the regular responsibilities of the unit of general local government are not eligible for assistance with RCIF. ()

c. Equipment. The purchase of equipment, fixtures, motor vehicles, furnishings or other personal property, which is not an integral structural fixture, is generally ineligible. ()

d. Operating and maintenance expenses. ()

201. -- 249. (RESERVED)

250. IDAHO GLOBAL ENTREPRENEURIAL MISSION (IGEM) GRANT PROGRAM.

01. Program Intent. The IGEM Grant Program funds commercialization grants supporting University and industry research partnerships for the purpose of enhancing technology transfer and commercialization of research and technologies developed at the Universities to create high-quality jobs and new industries in the private sector in Idaho. ()

02. Eligible Applicants. Idaho's public research universities: Boise State University, Idaho State University, and University of Idaho. ()

03. Industry Partner. A domestic or foreign entity that designs, produces, or sells goods or services or that contractually agrees to undertake such acts in connection with the technologies licensed or otherwise transferred to the entity by a University, and that is partnered with an Eligible Applicant. ()

04. Review of Applications. In selecting IGEM awards, the IGEM Council will give greater weight to proposals that partner with Idaho-based entities. ()

05. Matching Funds. This grant requires a monetary or in-kind contribution from the industry partner as outlined in program guidelines. ()

06. Commercialization Revenue. Revenue generated through the commercialization of university intellectual property rights in a work authored or an invention conceived or first reduced to practice in the performance of an IGEM grant award are distributed as outlined in Section 67-4731, Idaho Code. ()

251. -- 299. (RESERVED)

300. IDAHO OPPORTUNITY FUND.

01. Program Intent. The Idaho Opportunity Fund provides funding for public costs incurred with the purpose to retain, expand or attract jobs, which include: ()

a. Construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations; ()

b. Flood zone or environmental hazard mitigation; or ()

c. Construction, upgrade or renovation of other infrastructure related items including, but not limited to, railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects. ()

02. Review of Applications. The Director of the Department may, in his sole discretion, award Opportunity Fund grants to local governments in accordance with program guidelines. ()

03. Matching Funds. This grant requires an allowable local match. Allowable match includes those

costs which are allowable within the Opportunity Fund and are provided by the local government as cash, in-kind services, fee waivers (such as development impact fees), donation of assets, the provision of infrastructure or a combination thereof. The match must represent a material commitment from the local government that is commensurate with the local government's financial condition. The Director of the Department has the authority to approve other forms of local match or waive the local match requirements. ()

04. Distribution of Funds and Eligible Applicants. Funds will be disbursed from the Opportunity Fund to local governments as defined in the Local Government Grant Agreement and after the local government has demonstrated that the Grantee Business has complied with the terms of the Company Performance Agreement. ()

05. Grant Agreements. Local Government Grant Agreements will be entered into between the Department and one (1) or more local governments, and contain the provisions specified in the program guidelines. In addition, Company Performance Agreements will be entered into between one (1) or more local governments and a Grantee Business, and containing provisions outlined in the program guidelines. ()

301. -- 349. (RESERVED)

350. IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT (ICDBG).

01. Incorporation by Reference. The Department of Commerce adopts and incorporates by reference the CDBG Procedures Guide, CDBG Application Handbook, the CDBG Grant Manual, 24 CFR Part 570, and the most current Annual Action Plan as rules for the administration of the Idaho Community Development Block Grant. ()

02. Purpose. The rules incorporated by reference in (01) relate to the scope and procedures for the implementation of the Idaho Community Development Block Grant Program. ()

351. -- 999. (RESERVED)

28.04.01 – RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4744, Idaho Code. ()

001. SCOPE.

These rules implement the Idaho Reimbursement Act, including application and pre-application process, formation of incentive agreements with the business entity, reimbursement to the business entity through an earned tax credit, annual reporting procedure. ()

003. ADMINISTRATIVE APPEALS.

The award of a credit under the Tax Reimbursement Incentive Act is made at the recommendation of the Director of the Department of Commerce and approval of the Economic Advisory Council (Council). In light of the negotiated nature of awarding the Tax Reimbursement Incentive (TRI), there is no administrative appeal under these rules. Nothing in this section prohibits an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. ()

004. -- 099. (RESERVED)

100. DEFINITIONS AND ABBREVIATIONS.

The following definitions apply: ()

01. Incentive Agreement. A reimbursement contract between the Department and the business entity which details any instruction provided by the Council in addition to the requirements detailed in Chapter 47, Title 67, Section 4740, Idaho Code. Also referred to as an Agreement. ()

02. Pre-Application. A form, paper or electronic, that is completed by the business entity or on behalf of the business entity by an authorized economic development or local government representative when details about the Meaningful Project are not fully known. A pre-application necessitates that an application is completed by the business entity or its authorized representative at a later time, and prior to award of a tax credit. ()

03. Tax Reimbursement Incentive Act (TRI). A performance based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho. Also known as the Idaho Reimbursement Incentive Act. ()

101. -- 129. (RESERVED)

130. PROGRAM INTENT.

The TRI is designed to accelerate the growth of new business opportunities, encourage the creation of high-paying jobs, and diversify the state's economy. The Tax Reimbursement Incentive is a performance-based economic development tool that provides a refundable tax credit up to thirty percent (30%) for up to fifteen (15) years on new business entity income tax, sales tax, and payroll taxes paid as a result of meaningful project. The TRI will perpetually generate the revenues needed to fund the incentive. ()

01. Available Credit. This credit is available to both existing and new companies seeking expansion in the state. The tax credit percentage and project term are negotiated based upon the quantity and quality of jobs created, state/regional economic impact and return on investment for Idaho, among others. The credit authorized must be the lowest approved percentage and term that will incentivize creation of new jobs and New State Revenue. ()

02. Evaluation and Recommendation. Incentives will be evaluated and recommended to the Council by the Director, with final approval by the Council. The TRI will be governed by detailed incentive agreements between the Department and business entity. ()

131. -- 149. (RESERVED)

150. ELIGIBILITY.

01. Eligible Recipients. Recipients of the TRI are limited to existing business entities located in Idaho seeking to expand their companies within the state of Idaho, and business entities, new to Idaho, seeking to relocate to, or expand in, the state of Idaho. ()

02. Eligible Projects. An eligible project is an expansion of an existing business located in Idaho or the

creation of new business operations in Idaho that generate the minimum required new jobs based on rural or urban location. ()

151. JOB CREATION CRITERIA.

01. Rural Community. The minimum new jobs required for a rural community is not less than twenty (20) over the term of the project. ()

02. Urban Community. The minimum new jobs required for an urban community is not less than fifty (50) over the term of the project. ()

03. New Jobs. New jobs must exceed the business entities' maximum number of full times jobs in Idaho during the twelve (12) months immediately preceding the date of the application. ()

04. Job Shift. A job that shifts from one (1) location within the state of Idaho to another location within the state of Idaho is not considered a new job. ()

05. New Jobs Wages. New jobs wages must equal or exceed the average annual county wage in the county where the jobs are located. The Department will annually publish the average county wage based on the most recent, non-preliminary information, obtained from the Idaho Department of Labor. ()

152. APPLICATION PROCESS.

01. Inquiry. The business entity, or its authorized representative, may engage an authorized representative from the Department to complete an initial screening process. The screening process will assist the business entity in determining to proceed with a pre-application or application. Information necessary during screening includes general details about the Project, the number of full-time jobs, the number of new jobs, the minimum new jobs, the rural or urban area under consideration, the industry, the community contribution, as well as any other information requested to determine eligibility. The business entity, in consultation with the Department's representative, makes a determination to proceed with a pre-application or a full application depending on the project timeline, known project details or other factors associated with the project. ()

02. Pre-Application. After the business entity's determination to proceed with a pre-application, the business entity, or its authorized representative, will be provided with a pre-application. A pre-application may be completed by the business entity or an authorized representative of the business entity, such as an economic development or local government representative. A pre-application must detail the following: ()

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; ()

b. A statement of dependency explaining whether the project will occur or how it will be altered if the application is denied by the council; ()

c. A letter from the city or county, or both, expressing a commitment to supply community contribution; ()

d. Detailed description of the proposed capital investment; ()

e. Detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and ()

f. Detailed description of the estimated new state tax revenues by tax to be generated by the project. ()

03. Pre-Application Estimate Letter. Upon review and acceptance of a pre-application, the Director may issue an estimate letter to the business entity or its authorized representative, or both, which describes the

estimated amount of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. This letter is not a binding commitment but an estimate based on the initial information supplied in the pre-application. ()

04. Application. After the business entity's determination to proceed with an application, the business entity will be given access to the application, which must include, but not be limited to, the following information: ()

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; ()

b. An affidavit of criticality explaining that without the TRI incentive, the business entity would be forced to alter its project or not choose Idaho; ()

c. A letter from the city or county, or both, describing their commitment to supply community contribution, a specific description of the contribution, and the amount of the contribution; ()

d. Business entities currently doing business in Idaho will supply a letter from the Idaho State Tax commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission; ()

e. An estimate of Idaho goods and services to be consumed or purchased by the business entity during the term; ()

f. Known or expected detriments to the environment or existing industries in the state; ()

g. An anticipated project inception date and proposed schedule of progress; ()

h. Any proposed performance requirements and measurements that must be met prior to issuance of the tax credit; ()

i. A description of any proposed capital investment; ()

j. A detailed schedule and description of the projected jobs to be created, the projected wages to be paid for those jobs, and the anticipated hiring schedule for those jobs; and ()

k. The estimated new state tax revenues to be generated by the project. ()

05. Application Recommendation Letter. Upon review of an application, the Director may issue a letter that details the Director's anticipated recommendation to the Council. The letter may include the percentage of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. All application recommendation letters must contain a "subject to Economic Advisory Council approval" contingency clause. ()

06. Technical Review - Pre-Application. The Director and Department staff will complete a technical review of each pre-application. Upon satisfaction that all pre-application requirements are met, the Director may issue an estimate letter. ()

07. Technical Review - Application. The Director of the Department and Department staff will complete a technical review and economic impact analysis of each application. The technical review will consider many economic factors and external information sources such as, but not limited to, the region, industry, financial health and history of the business entity, as well as the quality, quantity and economic impact of new jobs and new state revenue. Upon satisfaction that all application requirements are met, the Director may submit a recommendation for award to the Council. ()

08. Economic Advisory Council. The Council reviews the application and the Director recommendations. Following review the council has the following three (3) options: ()

a. Request additional information or action from the Director in order to obtain necessary information to approve or reject the application; or ()

b. Approve the application and instruct the Director to enter into an incentive agreement with the business entity; or ()

c. Reject the application. ()

d. An approval or rejection from the council is not considered a contested case pursuant to Chapter 52, Title 67, Idaho Code, provided, however, that nothing in this section prohibits an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. ()

09. Pre-Application Schedule. The pre-application is open year round. Review of pre-applications are subject to the meeting schedule of Department staff. ()

10. Application Schedule. The application is open year round. Review of applications is subject to the meeting schedule of Department Staff and the Council. The Council will meet no less than quarterly and has the ability to meet more often at the request of the Director. ()

153. -- 159. (RESERVED)

160. CONFLICT OF INTEREST.

Conflict of Interest is defined by Idaho's Office of the Attorney General as any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or member of the person's household, or a business with which the person or a member of the person's household is associated. In the event Department staff, including the Director has a conflict of interest regarding an application, the conflict must be fully disclosed to the Director and the Council, and that person must abstain from decision making or evaluation of the application. In the event a Council member has a conflict of interest regarding an application, the Council member must fully disclose such conflict to the Director and the Council, and that Council member must abstain from discussing or voting on the application. ()

161. -- 169. (RESERVED)

170. AGREEMENTS.

01. Incentive Agreement. At the direction of the Council, and in accordance with the criteria established by these rules, the Director enters into an incentive agreement with the business entity. ()

02. Agreement Terms Defined. The incentive agreement contains any terms as approved by the Council, or deemed necessary by the state Deputy Attorney General, as well as defines the following: ()

a. Maximum term that is not to exceed fifteen (15) years; ()

b. Projected new state revenues to be generated during the term; ()

c. Method and recordkeeping requirements to determine projected new state revenue to be generated; ()

d. The approved tax credit percentage applied to new state revenue each year the business entity is entitled to receive the reimbursement during the term of the meaningful project; ()

e. The projected new jobs; ()

f. The terms and conditions of any and all performance requirements and measurements that must be met prior to the issuance of a tax credit authorization; ()

g. The agreed upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the business entity must be adequate to demonstrate to the director that all requirements and measurements have been met for the business entity to receive the tax credit; ()

h. The consequences of default by the business entity; ()

i. The period to be used to determine the taxes paid at the date of application; ()

j. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. ()

k. The federal employer identification or social security number for each individual or entity stated as the business entity in the incentive agreement; and ()

l. Identification of the individual or entity that is or will be claiming the refundable credit. ()

171. -- 179. (RESERVED)

180. TAX CREDIT AUTHORIZATION.

01. Claiming Tax Credit. No business entity may claim a tax credit unless the business entity has a tax credit authorization issued by the Department. A business entity may claim a tax credit on its tax return, in the amount listed on the tax credit authorization for the year listed on the tax credit authorization. ()

02. Duplicate Copy. The Department must provide a duplicate copy of any tax credit authorization to the Tax Commission. ()

181. -- 189. (RESERVED)

190. ANNUAL REPORTING BY APPLICANT.

Required Annual reporting must be outlined in the incentive agreement and will include, but not be limited to, the following: ()

01. New State Revenues. Supporting documentation of the new state revenues from the business entity's new project that were paid during the preceding calendar year. ()

02. New Jobs Created. Supporting documentation of the new jobs that were created during the preceding tax year and the corresponding payroll information associated with the new jobs. ()

03. Known or Expected Detriments. Known or expected detriments to the environment or existing industries in the state. ()

04. Authorization Document. A document that expressly directs and authorizes the Tax Commission and Department of Labor to allow the Department access to the business entity's returns, filings and other information that may be necessary to verify or otherwise confirm the declared new state revenues, the new jobs and the associated payroll information. ()

05. Tax Commission Letter. A letter from the Idaho State Tax Commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission. ()

06. Other Entitle to Rebate. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. ()

07. Supporting Documentation. Supporting documentation that the business entity has satisfied the

measurements and requirements outlined in the incentive agreement. ()

191. ANNUAL REPORTING BY DEPARTMENT.

The Department must create an annual written report for the Governor and the Legislature describing the following: ()

01. Successes. The Department's success under this act in attracting new jobs; ()

02. Estimated Tax Credit Commitments. The estimated amount of tax credit commitments made by the Department and the period of time over which tax credits will be paid; ()

03. Economic Impact to State. The economic impact to the state related to generating new state revenue and providing tax credits under this act; ()

04. Estimated Costs and Benefits. The estimated costs and economic benefits of the tax credit commitments that the Department made; and ()

05. Actual Costs and Benefits. The actual costs and economic benefits of the tax credit commitments the Department made. ()

06. Submittal of Report. The report must be submitted to the Office of the Governor and the appropriate legislative committee chairmen in a timely manner following the close of the state's fiscal year. ()

192. -- 199. (RESERVED)

200. AUDIT.

The Department must arrange for an independent third-party audit annually pursuant to Chapter 47, Title 67, Idaho Code. The Department must consider any audit recommendations provided during the audit and implement changes as necessary as a result of those recommendations. ()

201. -- 209. (RESERVED)

210. CONTINUATION OF TAX CREDIT.

The Department will review the business entity's annual report. Provided the business entity provides a reasonable justification for authorizing or continuing a tax credit, the Department determines the amount of the tax credit to be granted, issue a tax credit authorization to the business entity, and provide a duplicate copy of the tax credit authorization to the Tax Commission. The amount of the tax credit to be continued must be in accordance with the credit percentages specified in the incentive agreement. The TRI will not be extended beyond the term and length specified in the incentive agreement. ()

211. TERMINATION OR SUSPENSION OF TAX CREDIT.

During the term of the project for each business entity, the Department will review the business entity's annual report. If the information provided is inadequate or inaccurate to provide a reasonable justification for authorizing or continuing a tax credit, the Department may: ()

01. Denial of Tax Credit. Deny the tax credit for that tax year; or ()

02. Termination of Agreement. Terminate the incentive agreement for failure to meet the performance standards established in accordance with the terms outlined in the incentive agreement; or ()

03. Request for Additional Documentation. Request the business entity to submit additional documentation. ()

212. -- 999. (RESERVED)